

STATE OF MICHIGAN  
COURT OF APPEALS

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DALE BRADLEY BENNER,

Plaintiff-Appellant,

v

SALVATORE MINI,

Defendant-Appellee.

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UNPUBLISHED

June 28, 2005

No. 261138

St. Clair Circuit Court

LC No. 03-000488-NI

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

SCHUETTE, J. (*dissenting*):

I respectfully dissent and would affirm the trial court’s grant of defendant’s motion for summary disposition in this automobile negligence action.

A person is subject to tort liability for automobile negligence if the injured person “suffered death, serious impairment of body function, or permanent serious disfigurement.” MCL 500.3135(1). A serious impairment of body function is defined as “an objectively manifested impairment of an important body function that affects the person’s general ability to lead his or her normal life.” MCL 500.3135(7).

In this case, the experienced trial court judge complied with the language of Michigan’s no-fault statute, MCL 500.3135, *et. seq.*, and applied the principles enunciated in the consolidated cases of *Kreiner v Fischer*, 471 Mich 109, 131-132; 683 NW2d 611 (2004) and *Straub v Collette*, 471 Mich 109; 683 NW2d 611 (2004). The *Kreiner* decision chronicles the history of legislative and judicial opinions on this controversial subject and contains guidance for the bench and bar:

[P]ursuant to the Legislature's directives embodied in the 1995 amendment, "serious impairment of body function" contains the following components: an objectively manifested impairment, of an important body function, and that affects the person's general ability to lead his or her normal life. Furthermore, courts, not juries, should decide these issues. *Id.* at 121.

The issue presented in this case is similar to the issue our Supreme Court faced in *Kreiner*; whether plaintiff’s impairment affects his general ability to lead his normal life. Here, the trial judge applied the multi-step approach articulated in *Kreiner*, which is “meant to provide

the lower courts with a basic framework for separating out those plaintiffs who meet the statutory threshold from those who do not.” *Id.* at 131.

A review of the trial court’s opinion reveals a reasoned examination of the facts presented and a thorough assessment of the totality of the circumstances of plaintiff’s impairment. Our Supreme Court in *Kreiner* determined that the duration of the impairment does not necessarily mandate a finding of a serious impairment of body function. Instead, whether one has suffered a serious impairment of body function is determined by the totality of the circumstances and the core issue to be determined is “whether the impairment affects the person’s general ability to conduct the course of his normal life.” *Kreiner, supra* at 134. Here, the trial court stated:

While Plaintiff has shown objectively manifested impairments of important body functions, he has not shown that these injuries have affected his ability to lead his normal life under the standard set forth in the No-Fault Act and interpreted in *Kreiner*. Plaintiff’s life was indeed affected for a period of time following the incident in that he could not work or engage in recreational physical activity; however, it does not appear from the medical records or from Plaintiff’s deposition testimony that the course or trajectory of his life has been affected by this incident.

Expressed in a different way, the question posed before this court is whether plaintiff met the threshold legal issue as described in *Kreiner*. The trial court determined that plaintiff did not meet this hurdle. A review of the record reveals no clear error. The trial court utilized the proper statute in this case and correctly followed binding applicable case law. For the trial court to reach a different contrary decision would require a change in the no-fault statute and completely different case precedent.

I would affirm.

/s/ Bill Schuette